(Testimony of Leslie R. Kérdell.)

A. We kept that money in a separate account from our corporate funds.

Q. From time to time during the life of the contract you presented claims or accounts to the Government for their approval, isn't that correct?

A. That is correct.

Q. And the amounts of money that you received from time to time were predicated upon the approval of your claims or accounts presented to the War Shipping Administration, isn't that correct?

A. That is correct.

Q. So that all of the things that were purchased for the steamship Mission San Diego, there would some time in your relations with the War Shipping Administration when you would seek repayment for that amount, isn't that correct? A. Yes, sir.

Mr. Faulkner: That is all.

Redirect Examination

Mr. Pratt: Q. Whatever was paid in connection with the management of this steamship Mission San Diego was all paid, you have already testified, out of Government funds in the first instance, isn't that right? A. Correct, sir.

Mr. Pratt: That is all.

Recross Examination

Mr. Faulkner: Q. Those were Government funds that were made available to your company under a provision that provided [2079] that they may advance money to you, isn't that correct?

A. Let me clarify the procedure. The Govern-

(Testimony of Leslie R. Kerdell.)

ment gave us a certain sum of money. In the beginning it was $300,000.00 of Government funds. We did not put our corporate funds out for the purchase of supplies, wages, or anything. The Government gave us at one time $300,000.00 and at present, now, $500,000.00, to start out with. From those funds we pay wages and supplies and so forth, and when the fund was reduced to where we believed it should be replenished, we accounted for our expenditures and asked for replacement up to the $300,000 or $500,000. The money that we spent was their money first.

Q. Mr. Kerdell, isn't this correct, that what the Government did in this case was that they gave you a fund under a written contract and you were accountable to the Government for that money—your company alone were accountable to the Government for that money, isn't that correct?

A. We were given funds by them and we were accountable for those funds to them.

Q. And you put up a bond to the Government to protect the Government? A. Exactly.

Q. And that is provided for in that agreement, is it not? A. That is right.

Q. After the writing that you participated in the execution of was signed, and after the Government advanced money to your company, you then had a fund that you had a direct responsibility to account for to the United States Government, isn't that true? [2080] A. Yes, sir.

Q. And to protect the Government your com-

(Testimony of Leslie R. Kerdell.)

pany put up a bond, isn't that right? Then you went out and you supplied the ships, you paid off the crews, you paid the taxes, provided, I assume, funds for the sea captains to purchase in the places where their ships would put into, isn't that correct? And you made up an account of that and you kept it separate from other transactions, and then from time to time your company would account to the War Shipping Administration, isn't that right?

A. That is correct.

Q. And if items were disallowed, then it was your loss? A. That is correct.

Q. And for that your company received a compensation that is defined in that agreement?

A. That is correct.

Q. And the money at all times was money that you, your company alone, was responsible to the United States Government or the War Shipping Administration for, wasn't it?

A. That is correct.

Mr. Faulkner: That is all.

Mr. Pratt: That is all. The Government now offers in evidence Exhibit 14 for Identification, which is a General Agency contract between the United States and the Isbrandtsen Steamship Company with a letter of allocation to that company under the General Agency contract for the management of the steamship Josiah Royce, Exhibit 14 for Identification is now [2081] offered in evidence.

Mr. Faulkner: Your Honor will recall that we

made certain objections at the outset of the trial to these, and I repeat those objections.

The Court: The objections are overruled. Let that be admitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 14.)

Mr. Pratt: This is offered as to Count 1 of the indictment.

The Court: Call your next witness.

Mr. Pratt: Call Mr. Reeves.

Mr. Faulkner: While we are waiting for this witness, your Honor, having in mind these contracts, I move to strike out all the testimony of these various persons who have been called in by the Government and have given their opinions or conclusions as to whose money they were expending. In other words, the Government as part of each instance has put in a written contract. With respect to the Deconhill Steamship Company, the testimony elicited from Mr. Kerdell, it was elicited, for purposes of this motion, that the moneys involved, the accountability of the moneys and whose money it was is a fact to be established by these agreements and not by a purchasing agent or with respect to some person who could not possibly be familiar with the terms of a contract to come in and say that this [2082] was Government money, and "I paid a bill wtih Government money," when the fact is that the money that the corporation was expending was money that was delineated, provided for and established under these contracts, and I think that any legal issue, which would not pri-

marily be fore the Jury but for your Honor, any legal issue in this case should be presented to the Court clearly upon the contracts and not be affected by what some purchasing agent or clerk or ship's steward said in relation to where the money came from, and I will delineate the particular parts later; but I would like to make the motion now and your Honor can either pass on it now or reserve it until I delineate it fully. But I do not think it is fair to the Government to have our legal position affected by statements of the kind that have been elicited on the witness stand.

Mr. Pratt: The various witnesses who have identified cancelled checks have testified in the various instances that the checks were payable out of Government funds, and that Government funds were provided for the purpose of paying such checks. They individually and each of them testified that that was a fact which they knew in connection with their official duties in the several corporations, and there have been innumerable instances in similar lawsuits to this in which the officers of the corporations have been properly permitted to testify, just as has been testified here, that from their own knowledge of the conduct of the business, the [2083] way it was handled, they know that Government funds were provided. They have, several of them, gone into details as to the manner in which the revolving fund was provided and the way in which it was restored to full amount.

Mr. Faulkner: I do not object to that part, your Honor. What I object to—in other words, I would

not take the position that a man could not say after a contract was established and moneys were provided, that it would not be competent for an officer or a bookkeeper even to say that this particular check was issued out of a fund established for the War Shipping Administration or under one of these contracts. But after they show that the fund was there, that the fund was used to pay, they cannot by the statement of these people go on and say that that was Government money that you were using. It was money that was entrusted to them as provided in the contracts. Now, whether it was Government money or not, they were responsible for it.

The Court: Since you have indicated that it is a question for the Court to determine, I have no hesitancy in declaring now that so far as this record discloses it was Government funds.

Mr. Faulkner: Your Honor, the payment of Government funds. I mean, if your Honor rules that, your Honor has to rule that on the agreements; but what I want to have your Honor do is to determine the issue from the contracts and not from what [2084] some clerk or somebody said.

The Court: I am going to allow the record to stand. Your motion will have to be denied.

Mr. Faulkner: Exception.

FRANK A. REEVES,

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. Frank A. Reeves.

Direct Examination

Mr. Houck: Q. Mr. Reeves, by whom are you now employed?

A. General Steamship Corporation.

Q. What is your position with that company?

A. Secretary-Treasurer.

Q. Was your position the same in April of 1944? A. That is right.

Q. What is the relationship between the General Steamship Company and the Isbrandtsen Steamship Company?

A. We had the sub-agency for them.

Q. And was that true in April of 1944?

A. Yes sir.

Q. Is that sub-agency agreement in writing?

A. No, it is not.

Q. You do not have a written copy of an agreement with that company? A. No.

Q. Under that sub-agency agreement do you handle and victual and supply ships, War Shipping Administration ships? A. Yes. [2085]

Q. Was one of those ships the Josiah Royce?

A. Yes.

Q. I show you Government's Exhibit 61 for Identification, I ask you to look at that document and tell me whether you can identify it?

(Testimony of Frank A. Reeves.)

A. Yes, that is an invoice.

Q. What is it?

A. It is an invoice of Nye & Nissen under date of April 25, 1944, for the U.S.A., WSA, Isbrandtsen Steamship Company, General Steamship Corporation.

Q. Did you supply that invoice to an agent of the Federal Bureau of Investigation some months ago? A. Yes.

Q. And where did you get it from?

A. From our records.

Q. Is it an official record of your department?

A. Yes.

Q. Of the General Steamship Corporation?

A. Yes.

Mr. Houck: The Government offers that invoice, 61 for Identification, in evidence at this time.

Mr. Faulkner: May I see it, Mr. Reeves? We have made general objections to these, your Honor, and that is the only objection.

The Court: The objection will be overruled.

Mr. Faulkner: That is offered on what count?

Mr. Houck: This is offered on count one of the indictment.

(U. S. Exhibit 61 for Identification was thereupon received in evidence.)

Mr. Faulkner: If counsel says that they have examined this check so that it covers that invoice; it is agreeable to me, your Honor. [2086]

Mr. Houck: May it be stipulated that this check

(Testimony of Frank A. Reeves.)

which I will have marked as Government's next in order is——

Mr. Faulkner: Subject only to the general objection.

Mr. Houck: Let me identify it further.

Mr. Faulkner: That saves the Clerk marking it twice. That is what I had in mind. Offer it in evidence. It gets an evidence number and it saves that time.

(The document was thereupon marked U. S. Exhbibit 156 for Identification.)

Mr. Houck: At this time the Government offers 156 for Identification under the stipulation that it is the check in payment of the invoice which is Government's 61 in evidence.

The Court: Let it be admitted and marked.

(U. S. Exhibit 156 for Identification was thereupon received in evidence.)

Mr. Houck: Q. I will show you this check, Mr. Reeves. Can you tell me what funds that check was drawn on?

A. This check was our corporate check.

Q. And it is drawn on general corporate funds?

A. Yes.

Q. Is there any transfer of money between Isbrandtsen Company and your company in connection with this sub-agency agreement?

A. Yes.

Q. And when would that be in relation to the date on that check?

(Testimony of Frank A. Reeves.)

A. We had funds of theirs on hand all the time.

Q. Can you give me an idea how big a sum they advanced to you? [2087]

A. It varied according to the requirement. We would estimate what we would require for a vessel and ask them for it, and they would advance it to us.

Q. Do I understand, then, that you had funds advanced you by Isbrandtsen prior to paying any expenses on the Josiah Royce on this occasion?

A. Yes.

Q. Can you state whether or not you would have paid that invoice had you not had sufficient funds from the Isbrandtsen Steamship Company to cover?

A. Probably not.

Mr. Faulkner: That is not evidence, your Honor: if he would have paid it, and he said "Probably not." That is not a fact.

Mr. Houck: Q. What is your practice in paying those invoices?

A. Our practice is to get the funds and then pay the bills.

Q. Get the funds ahead of paying the bills?

A. That is right.

The Court: I am going to take an adjournment unless you can conclude with this witness.

Mr. Faulkner: I can conclude with him in one minute, your Honor.

The Court: Very well.

(Testimony of Frank A. Reeves.)

Cross Examination

Mr. Faulkner: Q. Mr. Reeves, is it?

A. Yes.

Q. Mr. Reeves, in other words, this particular check was issued in the regular course of business of the General [2088] Steamship Company on account of corporate funds of your company, isn't that correct? A. That is correct.

Q. In connection with the Josiah Royce.

May I have from the Government the egg grading certificate?

Mr. Houck: We may want to use that in connection with our next witness, Mr. Faulkner, who will be the purchasing agent for this ship.

Mr. Faulkner: Then that is all, your Honor.

The Court: You may step down. The jurors may be excused until two o'clock.

(Thereupon an adjournment was taken until two o'clock p.m.) [2089]

Afternoon Session, March 1, 1946, 2:00 p.m.

The Court: You may proceed.

Mr. Pratt: Mr. Hanson, please.

Mr. Faulkner: Why not Mr. Pruner? He will only take one second, because he did not find the record.

Mr. Pratt: All right, then. Will you step aside, Mr. Hanson?

Mr. Hanson: Yes.

JOHN M. PRUNER,

recalled, having been previously sworn, testified as follows:

Recross Examination (Resumed)

Mr. Faulkner: Q. Mr. Pruner, since you left the stand this morning, have you examined the files of your company to determine whether you have a copy of, or a counterpart of an egg grading certificate in relation to a shipment of eggs to the Cape Pillar?

A. I have, but it is a 1944 order, and they are filed away, so I did not have time to get into them.

Q. You weren't able?

A. I didn't have time.

Mr. Faulkner: Well, the defense will pursue that further.

The Court: Why didn't you take your time?

A. Well, I had to get back here by two o'clock.

The Court: Do you wish him to return Tuesday?

Mr. Faulkner: Well, it doesn't make much difference who [2090] produces it, your Honor. If it becomes important we will pursue it.

The Court: Well, suppose someone could pick it up, there would be no necessity of any examination, would there?

Mr. Faulkner: That is agreeable, your Honor.

AUGUST HANSON,

recalled, having been previously sworn, testified as follows:

Direct Examination (Resumed)

Mr. Pratt: Q. Mr. Hanson, in connection with the loading of the steamship Czechoslovakia Victory, you brought this afternoon these records that I have in my hand, did you? A. I did.

Q. Did you find any of the time slips that the stevedores turned in indicating what time was spent in loading that particular boat in May of 1944?

A. No; we have destroyed, or disposed of those time slips.

Q. They are destroyed periodically?

A. They are destroyed periodically.

Q. And they are not in existence?

A. They are not in existence.

Q. The record that you brought is a payroll record of certain days in the end of April and the first few days in May of 1944, is that right?

A. We pay the men weekly and the week starts on Saturday.

Q. This is a weekly payroll record?

A. This is a weekly payroll record. [2091]

Q. Of stevedores who worked for a number of days on a number of boats, including the Czechoslovakia Victory? A. Yes.

Q. Is this part of the regular records of your company, kept in the regular course of business?

A. That is kept in the regular course of busi-

(Testimony of August Hanson.)

ness. That is the sheet, the working sheet. The payroll is copied from that.

Q. Are you familiar with the manner in which these records are kept? A. I am.

Q. The work that you do is the superintending of the work of stevedores in loading boats, is it not?

A. No, it is not. I am the maintenance superintendent on upkeep. We stow our own ships, not outside vessels. In other words, we run the American-Hawaiian shore gang. We load our own vessels.

Q. When it comes to the loading of a boat that is under your management, like the Czechoslovakia Victory, you have charge of it?

A. I have charge of it. In other words, I supervise it.

Q. You supervise the work of these stevedores?

A. Yes.

Q. You know he way in which these records are kept? A. I do.

Q. Can you tell from these records when the Czechoslovakia Victory was loaded?

A. No, I have no—I know the dates, but I have no—I know I do the work on the vessels.

Q. How do you know that?

A. In working in Encinal Terminal, the day the ship was at Encinal Terminal.

Q. What day was the Czechoslovakia Victory over there? [2092]

A. She arrived on the night of April 29th and she left there on May 5th.

(Testimony of August Hanson.)

Q. On what days was the Czechoslovakia Victory loaded, if you remember? A. Stores?

Q. Yes. A. On May 3rd and 4th.

Q. Directing your attention to the loading of the Czechoslovakia Victory, do you recall the manner in which eggs were loaded onto that boat?

A. I do.

Q. How many cases came at that time from Nye & Nissen?

A. I don't check the stores. I know——

Q. What?

A. I don't check the stores. I put them aboard. We have a checker on the dock who receives them. At that time we put two slingloads aboard which was 36 cases.

Q. You put 36 cases aboard?

A. I think it was 36, or near 36.

Q. Where were these 36 cases put on the ship?

A. They were stowed on the forward end of the chill box, athwartship.

Q. The chill box is the place where eggs are ordinarily and always stored? A. Yes, sir.

Q. At the time these eggs were brought on board, were there any stores of eggs remaining from the previous voyage?

A. Yes, there was about, I would say, approximately 20 or 25 cases.

Q. In storing the newly arrived stores of eggs, how did you have them stored in the chill box?

A. Well, in stowing the chill box we remove all old stores forward. I mean that is [2093] the way

(Testimony of August Hanson.)

that we put the new stores in back. In other words, in stowing those eggs I stowed them in block tiers. That is, two cases athwartships and two cases fore-and-aft, that is cross them, so when the ship is in motion the cases won't roll. That is what we call block tiers. I stowed them eight high, and I put on top of those the two cases of the old on each block of 10.

Q. On each block of 10 you put two cases of the old stores? A. Yes.

Q. So the old stores were on top of the new stores?

A. So they would use the old stores first.

Q. Was anyone present when the eggs were stored in that way, any of the employees on the boat?

A. No. The steward—I have supervision of that stowage, and when the stowing is complete, that is, the stowage on the ship, I call the steward down and explain to him and show him where the new stores are.

Mr. Faulkner: That is hearsay.

Mr. Pratt: Q. In this particular instance, did you point out to the steward where the new stores had been placed and where the old stores had been placed? A. Yes, I did.

Q. What was the condition of that chill box as you observed it at that time?

A. Well, I would say in fair condition. It had been cleaned and in removing the old stores they removed papers and other wrappings of the differ-

(Testimony of August Hanson.)

ent vegetables and [2094] the loose ends that fall between the grating, we cleaned up as much as we could. On that particular ship the eggs were so slow coming down that they didn't arrive, and in stowing a box we always put the eggs in first, and then the other fresh vegetables in the box, but it was a warm day in Alameda. We had to stow the icebox, and working from the after end of the box toward the forward end, and leave an alleyway open to get the eggs in.

Q. How long were the eggs on the dock before they were stowed in the chill box of the ship?

A. I would say we were waiting from one that afternoon to twenty minutes past three that the eggs arrived. When the eggs arrived the men were waiting and they backed up the trucks and put the eggs right aboard the ship. Possibly twenty minutes the eggs were from the truck to the icebox.

Q. What, if you know, was the temperature of the chill box?

A. That I didn't make no reading of.

Q. Did you observe if there was anything abnormal about the temperature of the icebox?

A. No.

Mr. Faulkner: Just a minute.

A. No, I wouldn't know. I know the box would be closed for two and a half hours, and the machine was running. The temperature was probably about 35.

Mr. Faulkner: Probably—I ask that that go out.

The Court: Well, that [2095]

(Testimony of August Hanson.)

Mr. Pratt: That is all.

Cross Examination

Mr. Faulkner: Q. Mr. Hanson, what ship did you load on the 4th of May?

A. On the 4th of May I was still working on the Czechoslovakia Victory.

Q. Is that the only ship you were working on?

A. No. On that day, yes.

Q. What ship did you load on the 5th of May?

A. What ship on the 5th of May? We worked at the pier.

Q. On the 6th of May?

A. We worked at the pier.

Q. What ship did you load on the 30th of April?

A. On the 30th of April I think we were working either cleaning up the Paul Revere's storeroom, or receiving dry stores for the Paul Revere.

Q. When you testified here this morning you did not remember the date of the arrival of the eggs on that pier——

A. I wouldn't say I did. In going over my records I know.

Q. In other words, since you have come back this afternoon, or, rather, since this morning you read a statement that was written out in longhand and signed by you, did you not?

A. I read part of it.

Q. Didn't you read it all?

A. I didn't read it all. I didn't have time. You cut me short.

Q. You stood here in the courtroom and you

(Testimony of August Hanson.)

read that statement with Mr. Pratt, isn't that right? A. I did, yes. [2096]

Q. Then you discussed that statement with Mr. Pratt? A. In your presence.

Q. Before I was present. Didn't you discuss the statement with Mr. Pratt when I was not there?

A. You were standing right at the desk, there, when he brought it to me.

Q. Is it your recollection that what happened this morning is that you discused the statement that you wrote out or signed also in my presence?

A. No, I wouldn't say that.

Q. In other words, is it not a fact Mr. Pratt showed you a statement and you discussed it with Mr. Pratt, and there was some misunderstanding in relation to the statement, and you had to call Mr. Johnson to explain the statement to you?

A. Mr. Johnson didn't explain no statement to me.

Q. Didn't Mr. Johnson stand right here——

A. No. He stood there, but he didn't say anything to me.

Q. He never addressed you at all?

A. Not that I know of, no.

Mr. Faulkner: Will you stand up, Mr. Johnson?

Q. Didn't Mr. Johnson stand right here and you stood right there and Mr. Pratt right here, and I was over by the table, and you had an animated discussion with those two men about that statement that they were showing you?

(Testimony of August Hanson.)

A. They were talking among themselves, not to me.

Q. Not to you? A. No.

Q. What did they say?

A. That I don't know.

Q. You don't know what was said?

A. Correct, I don't. [2097]

Q. But you do remember what you did with particular cases of eggs nearly two years ago?

A. I do.

Q. Who were the eggs from that were on the ship at the time of the arrival of the eggs on the pier from Nye & Nissen?

A. Didn't interest me. I didn't investigate.

Q. What?

A. I didn't investigate them; didn't interest me.

Q. They didn't interest you, at all?

A. No. When the stores come my job is to put them aboard, and I did that.

Q. There were about 24 cases——

A. And I did.

Q. About 24 cases on board when the eggs——

A. I wouldn't say exactly 24. I would say approximately 24, which I moved forward and stowed the new eggs.

Q. In respect to the eggs from Nye & Nissen, you personally saw them go into the chill box?

A. I supervised the chill box; yes, I saw them aboard.

Q. You piled them up in stacks of 8?

A. Yes, the bulkhead tier.

Q.

(Testimony of August Hanson.)

Q. In that chill box? A. Yes.

Q. That chill box had been opened about how long?

A. The chill box was opened for about, I would say, two hours in the morning.

Q. Vegetables were taken out of it?

A. Vegetables were taken out and we put into it.

Q. Were any vegetables remaining on the ship?

A. From the previous voyage there were probably some citrus fruits and two or three cases of potatoes that they had received in port, port stores.

Q. Those were in the chill box. Had those eggs come from Nye & Nissen?

A. I wouldn't say that they had, when the eggs arrived, who they came from didn't concern me.

Q. You testified on your direct examination that these were Nye & Nissen eggs.

A. I didn't make that statement, at all.

Q. Well, if it appeared in this record you don't mean to say you know who these eggs came from?

A. I don't know who they came from.

Q. You stacked them 8 high?

A. No, 16 in a tier. No—let's see. Eight high to the tier, cross tier and 4 high.

Q. They were 4 high?

A. 5 high. 10 high to the tier.

Q. Not 5 high?

A. 10 in a tier, 2 on top, make it a dozen.

Q. You made about seven tiers? A. No.

Q. If there were 36 cases? A. Yes.

(Testimony of August Hanson.)

Q. Then you put on top of each of those tiers a case of eggs—— A. Two cases.

Q. Two? A. Yes.

Q. That would make 14.

A. That would make 12.

Q. 12. Where were the other 12 cases of eggs that were part of the stores of the ship prior to arrival—— A. The first working tier.

Q. The first working tier? A. Yes.

Q. So when you left the chill box you then had 10 or 12 cases [2099] of eggs that had been on the ship before, and you also had, I think you testified, 36 cases of eggs——

A. I believe the receipt called for 36. I don't know what the checker checked. Whatever it called for, the receipt called for. I don't know.

Q. When you testified here a moment ago there were 36 cases of eggs, where—— A. I say——

Mr. Pratt: He didn't say that—pardon me.

The Witness: 16 on a load, two loads. The men had loaded 16 or 15 on a board, on the slingboard.

Q. How many slings went aboard?

A. Two slings went aboard. If there was any more than that they put them on top. I don't know what the requisition called for.

Q. If the record shows you indicated the number, you do not remember the number?

A. I had nothing to do with the number. Whatever comes down I put it aboard the ship.

Q. How do you remember the day?

A. That is my business.

(Testimony of August Hanson.)

Q. It is your business to remember?

A. I remember anything I know years back, if you want to know.

Q. You remember the day the particular merchandise comes down on the pier for years back?

A. Well, when the vessel loaded at Alameda, I can refresh my mind from many things. I know things like that. I can look in my record and get that. I can remember. That is one thing I remember.

Q. This is one thing you remember?

A. Yes, because when I get called on I look up the record. [2100]

Q. In the course of conversation here with Mr. Johnson and Mr. Pratt when I was present, you told Mr. Pratt that you remembered the date and that was the date you didn't need any coaching on; didn't you say that?

A. I don't think I did.

Q. Do you remember using the expression that that was something you didn't need any coaching on? A. I don't remember that.

Q. Didn't you say that right in this court room?

A. No, not that I know of.

Q. Didn't you use those words?

A. I don't use that word "coaching".

Q. You didn't use that word? A. No.

Q. To Mr. Pratt?

A. Ask Pratt if he heard it. If he said I did, I did.

(Testimony of August Hanson.)

Q. Mr. Hanson, do you remember the day you made that statement to those FBI men?

A. Yes, I do.

Q. What day was it?

A. That was about, well, I wouldn't exactly remember the date. It was around the 25th or 23rd, about 4:40 in the afternoon.

Q. You say that was not the exact date?

A. No. That is something that I don't remember. I don't remember those little things, but my work I do. I was—the telephone rang and they said there were two gentlemen who wanted to speak to me.

Q. Do you remember the names of the men who talked to you?

A. I didn't ask their names or anything. They were introduced to me, but I don't remember the names. Names are a thing I [2101] don't remember very well.

Q. Do you remember what they said to you?

A. They asked me if I stowed the Czechoslovakia Victory. I told them yes. Then they asked me which way I stowed it, and from the time the eggs arrived how long they were on the dock.

Q. What did you tell them?

A. I told them just what I said here, they were on the dock no more than 30 minutes at the most from the time they arrived until they were on board the ship.

Q. Do you remember when Mr. Johnson was there, the man who is in the room now?

(Testimony of August Hanson.)

A. His face looks familiar, yes.

Q. Do you remember if the man right in back of Mr. Johnson was there?

A. His face looks familiar.

Q. Was he the man who wrote the statement out?

A. Yes, he is the gentleman who wrote the statement.

Q. Did he explain to you that he wasn't making any threats of any kind to you?

A. He did that, he wasn't making any threats to me, just asking me, and wrote the statement out as I talked to him.

Q. He wrote it out?

A. He asked me and I told him, and as I went along he wrote it as I went.

Q. You saw these eggs arrive on the dock?

A. Yes, I was waiting for them.

Q. At the time they arrived on the dock they left the dock within a short time and were put into the chill room?

A. We took them off the truck and as the checker received [2102] them we put them aboard the ship.

Q. Did you see the checker receive them, yourself? Did you see him do it?

A. No. That was his business. As soon as they got there I went down below and got the boys to get the chutes and rollers ready to put the eggs in the box.

Q. Later you actually saw them in the box?

(Testimony of August Hanson.)

A. I stowed them down there and supervised the stowage.

Q. Did you ever see them taken out of the box?

A. Yes, I was——

Q. Did you see those particular eggs taken out of that chill box? A. I did not.

Q. Did you keep those eggs under your eye or supervision from then on?

A. No. When they finished stowing the ship I went back to the pier.

Q. Is that the last time——

A. The last time I boarded that ship.

Q. You saw them then when they had been stacked in the manner you detailed? A. Yes.

Q. When you got through stowing the old eggs and the eggs that came on board and you left the chill box, what was in the box other than eggs?

A. Well, there was oranges, citrus fruit, potatoes, carrots, onions, turnips, lettuce, tomatoes, cold cuts.

Q. Meat?

A. Cold cuts, meat for the night lunch, just a few pounds, couple of slices of chicken, a little bread, anything [2103] that goes into the chill box was there. The chill box was crowded. In other words, it was stowed for the trip.

Q. It was stowed for the trip? A. Yes.

Q. How large was the chill box?

A. It is a very large chill box. I would say about 15 foot wide, 27 foot or 25 foot long.

Q. How high? A. About 9 feet.

(Testimony of August Hanson.)

Mr. Faulkner: That is all.

Redirect Examination

Mr. Pratt: Q. Mr. Hanson, when did that vessel sail, do you know?

A. She sailed from Oleum on the 9th of May.

Q. From where? A. From Oleum.

Q. Where? A. That is up-river.

Q. When did she——

Mr. Faulkner: That is over in Contra Costa County.

Mr. Pratt: Q. When did the ship leave the pier where you had loaded it? A. On May 5th.

Mr. Pratt: That is all.

The Court: Step down.

The Witness: Do you want to keep my payroll, or will I take that back?

Mr. Pratt: That was not offered in evidence, and it wasn't marked for identification.

Mr. Faulkner: Would your Honor indulge me just one moment? [2104]

L. M. AMMON,

called as a witness for the Government; sworn.

The Clerk: Will you state your name to the court?

A. L. M. Ammon.

Direct Examination

Mr. Honck: Q. By whom are you employed presently?

(Testimony of L. M. Ammon.)

A. General Steamship Corporation.

Q. What is your position with that company?

A. Purchasing agent.

Q. Did you have that same position in April of 1944? A. Yes, sir.

Q. Have you been requested to produce the purchase order supplying the Josiah Royce, dated April 10, 1944? A. Yes; I have it.

Q. Do you have that with you? A. Yes.

Q. Will you produce it? A. Yes.

Mr. Houck: I ask this be marked Government's Exhibit for identification.

The Court: Admitted and marked.

(The document was marked U. S. Exhibit 157 for Identification.)

Mr. Houck: Q. Did you dictate that purchase order, Mr. Ammon?

A. I did not quite get that.

Q. Did you issue that purchase order?

A. Yes.

Q. Have you read it? A. Yes.

Q. Who is Mr. Berman, whose name appears under the writing, "Confirming phone order to Mr. Berman"?

A. He is the gentleman [2105] to whom we customarily telephoned our orders and later followed up with these confirmations.

Q. Do you recall making this particular order?

A. Yes.

Q. Is it a confirmation order of a prior phone conversation? A. That's right.

(Testimony of L. M. Ammon.)

Q. With whom did you have that prior phone conversation? A. With Mr. Berman.

Q. Who is he?

A. With Nye & Nissen.

Q. He is a representative of Nye & Nissen?

A. Who took care of the marine orders as we entered them.

Q. At any rate, you talked with him in connection with this order, is that correct?

A. Yes.

Q. Do you recall what that conversation was?

A. Well, it would go something like this: To deliver to this steamer the order as it appears here, butter, cheese and eggs at such and such a time, and at such and such a dock, with verbal instructions how to deliver the merchandise.

Q. What did you tell him about billing the merchandise?

A. That the invoice would be made out to United States of America, War Shipping Administration, care of General Steamship, the general agents, care of us, their agents.

Q. Did you discuss the question of whether Government inspection would be required?

A. Yes.

Q. What did you say in that connection?

A. Federal Department of Agriculture inspection would be required. That was a [2106] routine thing that we stipulated on all these orders.

Q. I show you Government's Exhibit 61 in evidence, which appears to be the Nye & Nissen in-

(Testimony of L. M. Ammon.)

voice for that purchase order, and call your attention to the fact that the eggs are described in considerably more detail in that invoice than they are in your purchase order. Will you explain why that should be?

Mr. Faulkner: Well, the explanation of the witness would not be binding——

Mr. Houck: Q. Well, did you discuss the type of eggs to be purchased under that order with Mr. Berman?

A. I don't precisely remember that, except that we were expected—we in the purchasing department were expected to buy large eggs when large eggs were available.

Mr. Faulkner: That wouldn't be binding on the defendants.

The Court: What they expected will go out.

Mr. Houck: Q. If you recall telling Mr. Berman about the size or the quality of eggs will you so state?

A. My recollection does not go back to the details of that conversation. I don't know whether we specified, specifically mentioned large eggs, or not. I can't say I remember that.

Q. This Government 157 for Identification is a record of your company, is that correct?

A. Yes.

Q. That is your company's copy of a purchase order? A. That's right.

Q. Is it a record kept in the regular course of

(Testimony of L. M. Ammon.)

business of the [2107] General Steamship Company? A. Yes.

Mr. Houck: This is offered in evidence, your Honor.

Mr. Faulkner: The same objection, your Honor.

The Court: Admitted and marked.

(The document was marked U. S. Exhibit 157 in evidence.)

Mr. Faulkner: Exception. [2107-a]

Cross Examination

Mr. Faulkner: Q. Mr. Ammon, as I understand, this purchase order is one that was taken from your files and it covered a purchase made at the time when you were the purchasing agent of this company, is that correct?

A. That is right.

Q. At or about April of 1944 did you on many occasions have occasion to phone the firm of Nye & Nissen to determine whether they had merchandise? A. Yes, frequently.

Q. Were frequent purchase orders issued to them? A. Yes.

Q. Had you talked in the regular course of business to Mr. Berman about those orders?

A. Yes. He was invariably the one I spoke to.

Q. That was just the normal way of doing business; you talked to Mr. Berman, is that correct?

A. That is true.

Q. Discussed some ship, its likely time of arrival—is that correct?

(Testimony of L. M. Ammon.)

A. Yes, we gave the date of delivery and the dock of delivery.

Q. Then some time later you would send them a purchase order, is that correct?

A. A confirmation purchase order.

Q. Do you know whether that purchase order would always precede the filling of the order?

A. No, on the contrary, the purchase order confirmation did not get issued until some time after the telephone order was placed.

Q. In other words, after a phone order—the war was on in April, 1944, and everyone was busy, isn't that right? [2108]

A. That is very true.

Q. So a phone order would go out to a company like Nye & Nissen, then later in the regular course of business a purchase order would be sent to them, isn't that right?

A. Yes, that is right.

Q. And the purchase order would reflect the time of the original phone order, is that correct?

A. True.

Q. And the time of sending that purchase order would depend on how busy the girls were, is that about it?

A. That is a fact.

Q. In your department do you have anything to do with the invoices? I mean did this invoice pass through your hands?

A. Yes,—not necessarily personally through my hands, but at least through the hands of my assistant who examines the invoice and sees that it

(Testimony of L. M. Ammon.)

agrees with the purchase order and sees that it is properly substantiated by delivery receipts, as we call them.

Q. That was just one of the many transactions at that time, wasn't it? A. That is true.

Q. And similar to transactions that you had then and that you have now? A. Yes.

Q. With respect to this particular transaction of the delivery of certain articles, did you ever receive any direction from any Government officer or agent not to pay that invoice?

A. Not to my knowledge.

Q. Did you ever have any complaint about the goods covered in [2109] that invoice?

A. That particular one?

Q. Yes.

A. I have a recollection that a request was made to exchange a certain portion of that delivery for larger eggs.

Q. Was that done?

A. Yes, to the best of my knowledge it was done.

Q. It was done? A. Yes sir.

Q. Was it a frequent or infrequent occasion to find objections to deliveries of merchandise—I mean was it a frequent or an infrequent occasion, when you would find merchandise of the type of eggs delivered that were not up to quality? Has that occurred on many occasions?

A. With the great number of ships that we were handling at that time—it was some twelve to fifteen

(Testimony of L. M. Ammon.)

or even more—I would say the occasions were infrequent when there was any objection.

Q. But they did occur?

A. There were a few requests for exchanges like this, but my recollection is that they were infrequent.

Q. Yes, but they did occur from time to time, did they not?

A. I would say several times.

Q. And they have occurred from time to time since then, have they not?

A. Yes, they have.

Q. I do not mean that the majority, but I mean occasional situations arose in respect to the merchandise where exchanges [2110] were made or there was a dissatisfaction with a product?

A. That is true about a request made for inspection of the eggs and disposal of the eggs depending upon what the inspection revealed.

Q. Has that been done on many occasions?

A. No; several times in the recent past.

Q. Has it ever been done with any merchandise of Nye & Nissen that you know of?

A. Lately, do you mean?

Q. Yes.

A. Well, lately we have not been dealing with Nye & Nissen.

Q. I mean the people you are dealing with now, is it done with respect to them?

Mr. Pratt: I object to that, if the Court please.

Mr. Faulkner: I will withdraw that question.

(Testimony of L. M. Ammon.)

Q. Have you had occasion in your dealings with Nye & Nissen on any occasion to request an inspection of their merchandise other than the instance here where a request was made to send large eggs?

A. Let's see if I understand your question correctly. Nye & Nissen were not the ones who performed the inspection.

Q. No, I know that.

A. Do you mean was a request made for them to exchange merchandise?

Q. Yes.

A. Well, yes. Here is a case in point. As I said before, there were several instances during that period when they were called upon to exchange eggs. [2111]

Q. And when they were called upon and their attention was directed to anything wrong in the merchandise, they corrected it, is that not correct?

A. Yes sir.

Q. And that was done in the regular course of business, wasn't it?

A. Well, it was certainly done.

Q. Other persons or firms other than Nye & Nissen had similar requests made during the same period, did they not?

Mr. Pratt: I will object to that——

The Court: I will allow it. You many answer.

The Witness: A. Well, at that time Nye & Nissen were about the only suppliers for the reason that they were frequently the only ones who had the merchandise.

(Testimony of L. M. Ammon.)

Mr. Faulkner: Q. I do not mean in particular reference to eggs, Mr. Ammon. What I mean is you were supplying the food for ships?

A. True.

Q. Butter, eggs, cheese, vegetables and things of that kind? A. Yes.

Q. In the instances where there was any imperfection in the goods delivered to you it would be your practice to call it to the attention of the seller, would it not?

A. Well, it would have been, yes.

Q. And occasions arose where you did that, isn't that correct?

A. Yes, I guess there were a couple—several instances when potatoes were not up to grade.

Q. Then the vendor or whoever it might be would have his [2112] attention directed to the article involved and he would either fight it out with your company or make a substitution of satisfactory merchandise: Isn't that the way it is done?

A. That is the way we work, yes.

Mr. Faulkner: That is all.

Mr. Pratt: The Government has produced at the request of Mr. Faulkner, copy of an egg grading certificate dated April 25, 1944, relating to eggs delivered to the Josiah Royce.

Mr. Faulkner: Q. Mr. Ammon, is this part of your file, do you know?

A. It is a copy of a document that we would have in our files.

Q. That is an egg grading certificate?

(Testimony of L. M. Ammon.)

A. Yes sir.

Q. Which you pay a fee to the Department of Agriculture for, and they send it to you?

A. Yes sir.

Q. And that relates to the merchandise on the Josiah Royce, isn't that right?

A. Yes, that is right.

Q. Mr. Ammon, if you will keep that purchase order I can follow it on this invoice. The situation in respect to this particular transaction in relation to the eggs is substantially this, is it not, that an order was placed, which is now in evidence, Exhibit 157, and it calls for 1800 dozen eggs, 60 cases, your original order, isn't that right?

A. Yes, that is right, 60 cases.

Q. Under that purchase order the firm of Nye & Nissen delivered to your company medium eggs, isn't that correct? [2113]

A. Well, that is the wording of the certificate: Medium, U. S. Grade, AA.

Q. Now, the eggs that the ship actually received for its voyage were changed to large eggs, isn't that correct? I will withdraw that. In other words, Mr. Ammon, the situation in respect to the particular eggs involved on the Josiah Royce was a situation where an order reading 1800 dozen eggs, 60 cases, without any qualification, was filled with medium eggs?

A. That is the situation on the face of it.

Q. And the firm of Nye & Nissen were advised

(Testimony of L. M. Ammon.)

of that, were they not, and they then replaced the eggs——

Mr. Pratt: There is no answer to the first question.

Mr. Faulkner: Q. And then they replaced the medium eggs with large eggs, isn't that right?

Mr. Pratt: I object to that. There are two questions in one and I do not know which one he is to answer.

Mr. Faulkner: As long as the witness understands he many answer.

The Court: It is a compound question.

Mr. Faulkner: It has to be. ——

The Court: Read the question.

(The reporter read as follows:)

"Q. In other words, Mr. Ammon, the situation in respect to the particular eggs involved on the Josiah Royce was a situation where an order reading 1800 dozen eggs, 60 [2114] cases, without any qualification, was filled with medium eggs."

The Court: Q. Is that true?

The Witness: A. The purchasing department hasn't the duty—at least, we hadn't—of actually checking the eggs as they were received on the ship. That is the function of the port steward, who employes a checker to receive the eggs and see that they are getting what is represented on the delivery receipts.

The Court: Speak to the jurors so they can hear.

The Witness: Pardon me. So that we up in

(Testimony of L. M. Ammon.)

the purchasing department would hardly know what is actually being delivered against our purchase orders until it is reported to us by the checker or the port steward.

Mr. Faulkner: Q. That is the point, Mr. Ammon. Wasn't it reported to your office that in respect to that ship that there had been delivered to that ship medium sized eggs?

A. No, my recollection is not to that effect. My recollection is that it was reported to us in the purchasing department that there were some small eggs delivered, and that we should take steps to have them exchanged, which we did.

Q. That is what I mean. Whether they were small or medium, a certain type of eggs were delivered to your ship. It was called to your attention that they should be exchanged for large eggs, isn't that correct?

A. Yes, that is true. [2115]

Q. And then that exchange was made, was it not? A. Yes sir.

Q. So that the difficulty in respect to the Josiah Royce was a shipment under a purchase order which did not designate eggs which went down to the boat and they were not of the size desired, and then there was some transaction between your company and Nye & Nissen to send different eggs down, isn't that it?

A. Yes, that is true; and moreover, the vessel's chief steward himself directly communicated with Nye & Nissen.

(Testimony of L. M. Ammon.)

Q. I thought you handled it?

A. We heard about it and I followed up on it.

Q. You know that the transaction at all events related to the size of eggs delivered and they were sent back and other eggs received?

A. Yes, yes.

Mr. Faulkner: I offer this egg grading certificate as our next exhibit in order for the defendants for identification.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit AU.)

Mr. Faulkner: I think that is all, your Honor.

Redirect Examination

Mr. Houck: Q. You stated, Mr. Ammon, that your office checked the invoice against a delivery receipt. I show you Government's Exhibit 60 for Identification. Have you ever seen that?

A. Yes, that is typical of what we get with the invoices to substantiate it. [2116]

Q. Is that similar to the delivery receipt of the company that that invoice was checked against, do you know? A. Yes sir.

Q. I call your attention to the two signatures that appear in the lower righthand corner. Do you know whose signatures those are?

A. Gaylord was a man——

Q. First, can you identify his handwriting?

A. No, I couldn't go so far as to identify the

(Testimony of L. M. Ammon.)

handwriting. I know there is a man named Gaylord employed as a checker by a port steward.

Q. Who is that other signature, do you know?

A. I don't recognize it.

Q. Do you know who the man is?

A. No, not offhand.

Mr. Faulkner: Who is it suposed to be? Someone in the Nye & Nissen Company?

Mr. Houck: No.

Mr. Faulkner: I see.

Mr. Houck: Q. Mr. Ammon, you stated that with respect to this order there was a request that the eggs be exchanged. Who made that request?

A. First the vessel's chief steward.

Q. And you said that he made a communication with you?

A. No, directly to the Nye & Nissen people, and we were later notified about it by our port steward so that we could follow up and see that it were done.

Q. What notification did you receive from your port steward? [2117]

A. Well, it was in the form of a phone call from the dock.

Q. I know, but what was said?

A. That certain eggs were delivered, small eggs.

Q. Were the eggs described in any other way except small?

Mr. Faulkner: This is a phone conversation, your Honor.

Mr. Houck: I submit this was opened up on cross-examination.

(Testimony of L. M. Ammon.)

The Court: I will allow it. The objection may be overruled.

The Witness: A. It is hard to recall every detail so long ago as that, but the conversation, as nearly as I remember it, was that the eggs were too small, that we should notify our suppliers to come and exchange them.

Q. You testified that there were several other occasions—incidentally, who made the request then that the eggs be exchanged? A. I did.

Q. You did? A. I was the one.

Q. To somebody in the Nye & Nissen Company?

A. Yes.

Q. Do you recall who you spoke to?

A. I always talked to Henry Berman.

Q. These other instances—I think there were several instances in which you made these requests for exchange in connection with deliveries by Nye & Nissen, is that correct?

A. As I recall, there were several instances during that period, not many. [2118]

Q. Do you recall who you spoke to at Nye & Nissen?

A. Probably Mr. Berman.

Mr. Houck: That is all.

Recross-Examination

Mr. Faulkner: Q. As I understand, Mr. Ammon, when Nye & Nissen were supplying eggs, there were several instances when your company would indicate that you had dissatisfaction with the eggs

(Testimony of L. M. Ammon.)

and you talked to Mr. Berman, and whatever your complain was they would remedy it, argue about it, or whatever it would be, is that right? They were always remedied?

A. Yes, they would remedy the trouble.

Q. After you stopped dealing with the firm of Nye & Nissen the same situation occurred after that, did it not, with other companies?

Mr. Pratt: I object to that, if the Court please, as to what somebody else did. It was not this defendant or these defendants.

Mr. Faulkner: In other words, your Honor, I think having in mind the basic law of sales that is involved in all these transactions that perishable products are always the subject of complaint—I mean that is the history of the business for fifty years. These people are buyers. They buy from Nye & Nissen today. They have complaints.

The Court: Read the question.

(The last question was read.) [2119]

The Court: He may answer.

The Witness: A. Several instances similar to that have arisen.

Mr. Faulkner: That is all.

Mr. Houck: Q. Did you ever get a complaint from another company? By the way, did you say you purchased eggs from another company?

A. Yes, we have.

Q. Did you ever get a complaint about those deliveries to the effect that the eggs were too small, that they were small eggs?

(Testimony of L. M. Ammon.)

A. I do not recall any such precise complaint of that nature, no.

The Court: Step down.

Mr. Faulkner: One question.

The Court: Only one question.

Mr. Faulkner: Or, rather, one minute subject matter.

Q. Mr. Ammon, do you remember in connection with the eggs on the Josiah Royce anything in connection with this subject: that the steward of the ship thought that "Medium" eggs or the small eggs, however they were described, affected the quality of the eggs, and he sent for a man in the Department of Agriculture, who explained to him that that reference merely meant size instead of quality? Do you remember anything on that subject?

A. My recollection is the complaint was about the size of the eggs.

Q. I mean, do you remember that the steward who made the [2120] complaint had the idea that the description of the size of the eggs affected their quality and that a Department of Agriculture inspector was sent there to explain to him that the size of the egg had nothing to do with the quality? Do you remember that subject matter with relation to this?

A. No, I do not recall that having come up.

Mr. Faulkner: That is all.

The Court: We will take a recess for a few minutes.

(Recess.) [2120-a]

The Court: Call your next witness.

MORAN AMUNDSEN,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. Moran Amundsen.

Direct Examination

Mr. Houck: Q. Mr. Amundsen, where were you employed in April, 1944?

A. I was a steward on the SS Josiah Royce.

Q. As steward of the Josiah Royce, what duties did you have in connection with the loading of stores on that vessel?

A. For this particular company, there wasn't much help at the time, so I was in charge of loading the whole ship with steward's stores.

Q. Do you recall where that ship was when the stores were loaded?

A. Outer Harbor, Berth 3, in Oakland.

Q. This was in April, 1944. A. Yes, sir.

Q. Do you recall loading eggs on board the ship at that time? A. Yes, 50 cases.

Q. I show you Government's Exhibit 60 for Identification. Have you seen that before?

A. That's right.

Q. Where did you see it?

A. At Oakland.

Q. In connection with loading the stores on board the ship? A. Yes, sir.

Q. Whom did you get it from?

(Testimony of Moran Amundsen.)

A. Doran signed it and give it to me. [2121]

Q. Who is Doran?

A. He was a checker, I believe.

Q. Did you see him sign it?

A. No, but this is his signature.

Q. You recognize his signature?

A. Yes.

Q. Whom did he get it from, if you know? Did you observe whom he got it from?

A. The only person possible would be the driver of the truck, would be the one to give it to him.

Q. In what connection did he give you that delivery slip?

A. There is quite a few——

Mr. Faulkner: That is hearsay as to the defendant.

Mr. Houck: Q. When did he give it to you?

A. He give it to me immediately after the eggs were put on the dock.

Q. You speak now of what eggs that were delivered?

A. The last time. This here was refused to be signed for the first time.

Q. Were you on the dock when the driver came in with the eggs? A. That is correct.

Q. What happened?

A. Well, the driver started to unload the eggs, and I was standing right by the truck; there were ten cases of eggs that didn't have no mark on them.

Q. What sort of a mark.

A. Of the Department of Agriculture.

Q. Is it part of your job to watch for the De-

(Testimony of Moran Amundsen.)

partment of Agriculture stamp on merchandise such as eggs?

A. I guess it is, supposed to be.

Q. At any rate, you were watching for it?

A. Yes, sir.

Q. This is the Federal Department of Agriculture stamp? A. Correct.

Q. Just tell us what happened. [2122]

Mr. Faulkner: May I have the record show what exhibit he is looking at?

Mr. Hock: 60 for Identification.

Q. What happened? You stated you noticed some of the eggs bore no marking, no agriculture stamp. What did you do?

A. Well, the driver had to go back to the plant. He told me he had to go back, so I told him——

Mr. Faulkner: That is hearsay.

Mr. Houck: Q. What did you do? What happened to the eggs?

A. The eggs were put onto the dock near to the ship, the 10 cases were removed.

Q. How many cases were supplied?

A. 60. I wouldn't accept the 10 that didn't have the stamp, so the eggs were moved from there over against the bulkhead by the pier.

Q. How were they placed with relation to the 10 that didn't bear the stamp and the others which did?

A. There was a little space between them; 10 cases were set to the right and the others were setting to the left.

(Testimony of Moran Amundsen.)

Q. Did you make any examination of the cases at that time?

A. I broke oper two or three of them. I looked at the eggs. They were all small.

Q. All small eggs? A. That's right.

Q. I show you Government's Exhibit 59 in evidence and ask you to look at the eggs in that exhibit.

A. That is just exactly what they were. [2123-4]

Q. Those are——

A. It took four of them to fill the pan up.

Q. Your testimony is these are exactly like the eggs you saw on that occasion?

A. Yes.

Q. Were the eggs in these two or three cases you opened uniformly small like that, or were some larger?

A. They varied a little bit; they were all small. They were all those size.

Q. What did you do?

A. The next thing I knew the FBI was there.

Q. Who? A. Mr. Magee.

Q. Anybody with him?

A. The first time he came alone and he returned with an Army colonel, I think it was, at that time.

Q. At any rate, a person in an Army uniform?

A. Yes.

Q. What did you do?

A. We took cases of eggs, I mean—I should have told you the eggs were loaded, the 50 cases were loaded.

(Testimony of Moran Amundsen.)

Q. 50? A. The good eggs.

Q. 50 not counting the 10 that had no markings on them? A. That is correct.

Q. You loaded them where?

A. Put them in the chill box.

Q. On board the ship? A. Yes.

Q. How soon was that after they were delivered on the pier?

A. A matter of a few hours.

Q. Incidentally, do you recall what pier it was the ship was loaded at?

A. No. 4, I think. Pier 3 or pier 4.

Q. Where? A. Oakland Outer Harbor.

Q. Oakland Outer Harbor. You loaded them in the chill box? [2125]

A. Yes.

Q. In what condition was the chill box at that time?

A. I just completed cleaning out the chill box. It was in perfect condition.

Mr. Faulkner: That calls for his opinion and conclusion and the expression is an opinion that it was in perfect condition.

The Court: What do you mean by "perfect condition"?

A. Well, there is a lot of things that could happen to a box, but these boxes were in perfect running condition. This had been completely overhauled by a firm in San Francisco, I don't know the name, completely checked. The temperatures were right.

(Testimony of Moran Amundsen.)

Mr. Houck: Q. Was it clean and dry?

A. Yes.

Q. Both of those things? A. Yes.

Q. The 10 cases that you did not put on board, what happened to them?

A. They returned with the driver, who picked them up and give me 10 more.

Q. Who returned——

A. Nye & Nissen truck.

Q. The same driver who was there before?

A. No.

Q. What did he do?

A. He picked up the 10 cases of eggs and give me 10 more in place.

Q. He returned the same cases in his truck?

A. Yes.

Q. He gave you 10 in return? A. Yes.

Q. What did you do with them?

A. I put them in the chill box also. [2126]

Q. With the others? A. Yes.

Q. Did you make a trip with those 60 cases that were in the chill box you told us about?

A. No. We got 60 new cases the following day.

Q. How did that happen?

A. They brought them down to the ship.

Q. Did you order them?

A. I guess they were ordered through the office.

Q. Any rate, a company driver came down?

A. Yes.

Q. What did he do?

(Testimony of Moran Amundsen.)

A. He took the eggs and he give me new ones instead.

Q. In other words, all the 60 cases were unloaded from the ship?

A. They were pulled out of the ship and new ones put on.

Q. When was that in relation to the time the first 60 were loaded?

A. That was the following day, the 26th.

Q. The following day? A. That's right.

Q. Did you contact anybody from Nye & Nissen in connection with the shipment of eggs that were delivered on this occasion?

A. Well, I phoned Nye & Nissen.

Q. When was this?

A. On the afternoon of the 25th of that month I phoned Nye & Nissen.

Q. That is the day you first started receiving, loading eggs?

A. Yes. It was right after I found out the eggs were no good.

Q. Whom did you talk to?

A. The first person I talked to [2127] said she couldn't do anything about it, it was either a man or woman, I don't remember, but the next person told me I didn't know anything about eggs.

Q. Do you know who it was?

A. No, I do not.

Q. Do you know his position with the company?

A. No, I don't remember that.

Q. How did you happen to get him?

(Testimony of Moran Amundsen.)

A. I called that office and I was connected with him in the office.

Mr. Faulkner: I ask this conversation go out.

Mr. Houck: Well, I haven't offered it yet.

Mr. Faulkner: Your Honor, I ask the jury be instructed to disregard it.

The Court: Disregard what?

Mr. Faulkner: The conversation with an unknown person.

Mr. Houck: I have not asked for the conversation.

The Court: There is no conversation yet.

Mr. Faulkner: I beg your pardon. He just said, your Honor——

The Court: In any event, if there is any conversation let it go out and let the jury disregard it. Does that cover it?

Mr. Faulkner: That covers it.

The Court: I did not recall there was. There may have been.

Mr. Faulkner: Somebody told him he didn't know anything [2128] about eggs. That would be a conversation.

Mr. Houck: Q. Whom did you ask for when you contacted Nye & Nissen?

A. I asked for the person who was dispatching eggs to the ships; that is the way I termed it, I think.

Q. Then you were put on the line with somebody? A. Yes.

Q. What did you tell this person?

(Testimony of Moran Amundsen.)

Mr. Faulkner: We object as hearsay as to the defendants.

Mr. Houck: Your Honor, I submit this is admissible under two grounds; first, he talked to a representative of Nye & Nissen, and in that connection the corporation is bound. On the second phase, this has been opened up by the cross-examination of the defense counsel.

Mr. Faulkner: I have never asked this witness a question yet.

Mr. Houck: No, but you have opened it, you have opened up the issue of who had this conversation, and what was said about this matter. We should be able to bring out what the witness said.

Mr. Faulkner: If your Honor please, in a civil case this company might be bound by anybody, but in a criminal case an unknown person could not bind the company.

The Court: Read the question.

(Question read.)

The Court: I will sustain the objection at this time. Develop the facts, the facts and circumstances surrounding it.

Mr. Houck: Q. You testified that you had a talk with [2129] Mr. Magee and some Army colonel about these eggs. Where was that?

A. That was down on the ship.

Q. On board the Josiah Royce?

A. That is correct.

Q. Where on the ship?

A. In the forecastle, in my room.

(Testimony of Moran Amundsen.)

Q. What did you do in the presence of Mr. Magee and the other person?

A. When they came aboard they went down in the chill box and picked out cases at random.

Q. What cases?

A. The ones we got from Nye & Nissen. They were the only eggs in our box at that time.

Q. You showed them to Mr. Magee and the other person? A. That's correct.

Q. What did they do in your presence?

A. They took these eggs up to my forecastle.

Q. How many of them?

A. I think we carried up three the first time, two or three, and we candled them, or they did, rather. We went down and got a couple of more, if I am not mistaken, and they candled them also.

Q. Did you observe whether they weighed the eggs?

A. I couldn't tell you. I didn't ask them what the result was.

Q. Did you observe that?

A. I don't know if they weighed them or not. I know they used a light.

Mr. Houck: That is all with this witness, your Honor.

I offer Government's Exhibit 60, which is the delivery receipt accompanying this delivery, in evidence.

Mr. Faulkner: Do you mean the first delivery, Mr. Houck? [2130]

Mr. Houck: Well, the delivery, yes, the first delivery.

(Testimony of Moran Amundsen.)

Mr. Faulkner: The only objection is the general objection.

The Court: Overruled. Let it be admitted and marked.

(U. S. Exhibit 60 for Identification was thereupon received in evidence.)

Cross-Examination

Mr. Faulkner: Q. Mr. Amundsen, you were the steward on the Josiah Royce? A. Yes.

Q. In April, 1944. For how long had you been the steward on that vessel?

A. I just took the job there on the 10th of April.

Q. Had you been a steward before?

A. No, I hadn't.

Q. In other words, this was a new job for you, Mr. Anderson? A. That's right.

Q. In the course of your work, some eggs came down to the pier while you were present, is that right? A. That is correct.

Q. 60 cases of eggs? A. Right.

Q. You examined the cases of eggs and you observed that out of a total of 60 cases 10 of them did not have a Department of Agriculture stamp?

A. That's right.

Q. Was that discovery made after the driver had left.

A. No. He was there present when it was made.

Q. In other words, Mr. Amundsen, when the driver of the truck of Nye & Nissen was taking these cases of eggs off of their truck and placing

(Testimony of Moran Amundsen.)

them there, you and a checker were there to [2131] check them off? A. Right.

Q. As the cases were delivered there on the dock or pier the cases were examined and the numbers were checked, isn't that right?

A. Right. He segregated them himself, the driver.

Mr. Faulkner: What?

The Court: Read the record.

(Record read.)

Mr. Faulkner: Q. In other words, he took the cases off and put them on the pier?

A. I asked him to take those without the stamp and set them aside, and he did it for me.

Q. Those that did not have the stamp on?

A. That's right.

Q. He put those aside? A. Right.

Q. However, somebody signed that ticket for Nye & Nissen in your presence, is that correct?

A. I did not say that. I said that that was the following day, Doran signed.

Q. Look at this, please. Isn't that the first shipment?

A. This, here, is the first shipment?

Q. Correct.

A. If this is signed on the 25th then they didn't have any bill of lading for the second one the second day, this was a switch job. I don't know whether they had a slip or not. This was refused to be signed because I wouldn't let him put the eggs on the ship.

(Testimony of Moran Amundsen.)

Q. Do you know, Mr. Amundson—in other words, I may have misunderstood you. Was this signed after the ten cases had been returned and brought back?

A. That's correct. This [2132] is made out on the 25th.

Q. Yes.

A. Possibly they didn't bring them the next day, as they were just changing the eggs.

Q. At all events, when this was signed it related to the first shipment. A. Yes.

Q. Sometime between the signing of that document and, rather, sometime between the delivery on the wharf and the signing of that document, 10 cases of eggs had gone back to Nye & Nissen and 10 other cases had been brought down?

A. That is correct.

Q. While this first shipment of eggs was there on the wharf that the truck driver of Nye & Nissen left, did I understand you to say Mr. Magee came down? A. That's right.

Q. He was accompanied by a colonel?

A. Not the first time, no.

Q. Did he come back?

A. That is correct.

Q. The same day?

A. Came back with an Army colonel the same day, yes.

Q. Was this the colonel, the man with his finger to his nose there? A. I don't remember.

Q. You don't remember? A. No.

(Testimony of Moran Amundsen.)

Q. Was Mr. Magee, the man who is sitting here in court right next to the colonel?

A. Correct.

Q. Was that before the 10 cases of eggs had been sent back to Nye & Nissen?

A. I don't remember.

Q. Pardon me?

A. I don't remember if it was, or not. [2133]

Q. The eggs that were examined by the Colonel and Mr. Magee were the eggs that ultimately went back to Nye & Nissen, aren't they?

A. That I don't know. They all went back to Nye & Nissen the next day.

Q. The 10 cases without the Department of Agriculture stamp on were the cases of eggs that these two men examined, weren't they?

A. That's right. The 10 cases never got aboard the ship, and the cases they handled came out of the icebox.

Q. Didn't they examine the 10 cases of eggs that came in the first shipment, Mr. Amundsen?

A. You mean the 10 cases that were on the dock?

Q. Yes. A. He looked at them.

Q. They look at them, didn't they?

A. Yes.

Q. In other words, the 10 cases of eggs that were not put on board the ship and that came down to that pier were looked at by Mr. Magee and the colonel?

(Testimony of Moran Amundsen.)

A. You will have to ask them if they looked at them.

Q. They were on the dock at the same time that Magee and the colonel were on the deck, weren't they, the cases of eggs?

A. That is getting pretty close to the time I don't remember.

Q. You pointed out the 10 cases of eggs to those men that didn't have the Department of Agriculture stamp on?

A. That is correct, but whether they looked at them I don't know.

Q. Well, they were there to be seen if they desired to look at them? A. Yes. [2134]

Q. Then they went on board ship?

A. No, they didn't. Magee left and came back.

Q. When he came back did he then go aboard the ship? A. Yes.

Q. Were the 10 cases that didn't have that Department of Agriculture stamp still on the pier?

A. I don't remember if they were, or not.

Q. You don't remember that?

A. No, I don't.

Q. How many hours elapsed between the time that Mr. Magee was there the first time and the time he arrived later?

A. Well, it wasn't very long. I know that.

Q. Did you see anything happen to those ten cases that were on the pier when Mr. Magee came the first time and the time he came the second time with an Army officer?

(Testimony of Moran Amundsen.)

A. I seen the 10 cases that came back and I seen the 10 cases go on. They left the dock, so apparently he took them.

Q. Who took them?

A. Your driver, the Nye & Nissen driver.

Q. I didn't have a driver. I would like to have one today. Mr. Amundsen, when Mr. Magee came down there later there were 10 cases of eggs on that pier that you pointed out to him that didn't have a Department of Agriculture stamp? A. Yes.

Q. Mr. Magee took a label off a box, didn't he, one of those boxes, in your presence?

A. You will have to ask Mr. Magee.

Q. In your presence.

A. You will have to ask Mr. Magee.

Q. I am asking you if in your presence Mr. Magee took a label off a box.

A. I don't know and I don't remember. [2135]

Mr. Faulkner: May I have the labels?

The Court: He says he don't know and he don't remember.

Mr. Faulkner: I might refresh his recollection, then.

The Court: Very well.

Mr. Faulkner: Mr. Sullivan says that is the one we asked Counsel for the Government for and we never got any answer.

Mr. Sullivan: I don't know whether we asked them in open court, but we asked Mr. Hipelli where the label was if there was any for the Josiah Royce. It is not introduced in evidence.

(Testimony of Moran Amundsen.)

Mr. Faulkner: Q. Well, at all events, Mr. Amundsen, on the second occasion when the colonel and Mr. Magee came down to that pier—withdraw that.

Before Mr. Magee came down to the pier on the first occasion, had you telephoned to anyone about the markings on those cases?

A. I phoned after Magee had been down there.

Q. You phoned after?

A. After, that's right.

Q. Not before? A. Not before.

Q. He was gone a short while and he came back again? A. Yes.

Q. Then were the eggs on shipboard brought on the pier or did the men, Magee and the other man, go on board ship?

A. They came on board ship.

Q. At that time they examined some cases of eggs in your presence? A. That's right.

Q. Is that correct? A. That's correct.

Q. That was in the chill room of the ship?

A. No, that was in my forecastle.

Q. On the deck?

A. No, that is my room; that is my quarters.

Q. Your quarters.

A. That's right, that is where they were candled.

Q. Had they already been placed in the chill room?

A. Correct. They were taken from the chill room to my room.

Q. At the direction of these men or by you?

(Testimony of Moran Amundsen.)

A. By me. I helped carry them up.

Q. Well, they had been in the chill room?

A. That's right.

Q. That is what I meant. A. Yes.

Q. They had been loaded into the chill box and then they were brought up; all of them?

A. No, just a few cases.

Q. Did they go down into the chill room?

A. That's right.

Q. Did you examine that chill room?

A. That's right.

Q. What voyage was this of that boat, do you remember?

A. It would be voyage 3, wasn't it?

Q. Voyage 3, isn't it? A. I don't know.

Q. I think it was Voyage 3. You helped carry some cases up from the chill room to your place on board the ship that you mentioned?

A. That's right.

Q. How many did you carry up?

A. I don't remember. I know Billy Bollen carried one up, that was one of the utility men. I don't know if the gentleman there carried any, or not. I [2136] think there were three cases, maybe four in all, by the time we started.

Q. Were the cases opened?

A. Yes. They were sealed shut. We broke them open.

Q. You broke them open there, then?

A. Yes.

Q. They had a candling apparatus?

(Testimony of Moran Amundsen.)

A. Correct.

Q. They candled some eggs? A. Correct.

Q. How many did they candle?

A. I don't know. I did not watch them that close. I was in and out.

Q. Who did the candling?

A. I don't know that. I think Magee did, and the other gentleman over there.

Q. Mr. Magee, did he weigh any of the eggs?

A. I don't know.

Q. After they were finished were the eggs put back in the cases?

A. That's right, and put in the chill room.

Q. They placed them back in the store room?

A. That's right.

Q. The cases were nailed up?

A. No, not nailed up.

Q. They were placed back in the store room open? A. Yes.

Q. How long after that were those cases removed again from the chill room?

A. That 60 cases of eggs you are speaking of?

Q. Yes. A. The next day.

Q. That is all there were, still 60 cases?

A. Correct.

Q. Were any eggs removed?

A. No, there was not.

Q. Were all the egg cases full?

A. Right, it was all 60 full cases back there.

Q. So the cases that went back to the firm of

(Testimony of Moran Amundsen.)

Nve & Nissen had the same number of eggs in them then as they had before? A. Yes.

Q. Then you received some others?

A. 60 new cases of eggs.

Q. At that time did you see those brought to the dock? A. I sure did.

Q. Did they have Department of Agriculture labels? A. That's right.

Q. Do you know what type eggs they were?

A. They were large AA eggs.

Q. Did you open any of the cases?

A. Then opened all of them.

Q. Were they Large AA eggs?

A. They were.

Q. Did they go aboard the vessel?

A. They did.

Q. The vessel went out to sea?

A. Correct.

Mr. Faulkner: I think that is all. [2137a]

Mr. Faulkner: I will ask counsel for the Government if this, unidentified except for the court mark, which was produced by the Government, is supposed to represent a label on a case of eggs involved in the Josiah Royce, Exhibit 51 for Identification? We ask counsel for the Government to produce any label off a case involved in the Josiah Royce, in order that we may have——

Mr. Hippeli: I have no record of having received any, your Honor, from the Royce.

Mr. Faulkner: Will you inquire of Mr. Johnson, Mr. Magee and Colonel Hand?

Mr. Hippeli: No, no labels were removed from that ship.

Mr. Faulkner: That is all.

Mr. Hippeli: No redirect.

The Court: That is all. Step down.

Mr. Pratt: If the Court please, at this time the Government offers in evidence Exhibit No. 7 for Identification, which is a certified copy of a contract between the United States, through the War Shipping Administration and the De La Rama Steamship Company. Included in the exhibit, the certified copy, is a letter of allocation of the steamship Henry White to that company, the De La Rama Steamship Company, for management under the general agency contract. This is offered in connection with count 7 of the indictment, where a transaction covering that steamer is particularly described. It is also [2138] offered in connection with the first count of the indictment as an overt act in furtherance of the conspiracy.

The Court: Let it be admitted and marked.

(U. S. Exhibit 7 for Identification was thereupon received in evidence.)

Mr. Faulkner: I reserve the general objection, your Honor.

The Court: Overruled.

Mr. Faulkner: Exception.

H. H. PIERSON,

called as a witness for the Government; sworn.

The Clerk: Q. Will you state your name?

A. H. H. Pierson.

Direct Examination

Mr. Pratt: Q. Mr. Pierson, you are connected in an official capacity with the De La Rama Steamship Company, are you not? A. Yes, sir.

Q. And that company's office is here in San Francisco? A. Yes, sir.

Q. What is your title?

A. Pacific Coast Manager.

Q. That corporation is organized under the Philippine Islands, is it not, the Government of the Philippines? A. Correct.

Q. I will ask you in that connection whether your company, under your general agency contract with the War Shipping Administration, [2139] had the management of the steamship Henry White.

A. We did.

Q. In that connection, among the duties of your company was the supplying of stores for feeding the crew, or whoever traveled on the boat, is that right? A. Correct.

Q. I direct your attention to a paper, which is Exhibit 54 for Identification, a purchase order entitled, "United States of America, War Shipping Administration, De La Rama Steamship Company, General Agent," directed to Nye & Nissen, San Francisco, dated April 11, 1944, for delivery about

(Testimony of H. H. Pierson.)

April 25th to the Henry White of certain products, including 1500 dozen eggs, fresh processed, and 1200 pounds of butter, and some cheese. Can you identify that paper? A. I can, sir.

Q. Does that come from the regular records of your corporation kept in the regular course of business? A. It did.

Q. And the original of that purchase order, I take it, went to Nye & Nissen? A. Correct.

Q. Now, this purchase order was handled, so far as the ordering of the products is concerned, by whom? A. Mr. Hult.

Q. Mr. Hult?

A. Our purchasing agent at that time.

Q. He was then your purchasing agent?

A. Correct.

Q. And he is here in the building, is he not?

A. Correct.

Q. After the issuance of that purchase order I will ask whether there came to your attention this paper, Exhibit 53 for Identification, which is an invoice of Nye & Nissen directed to the Government in your care, De La Rama Steamship Company, General Agents, in the amount of $1,263.56, with an adjustment making a total amount of $1,254.44 for the products covered by the purchase order that you have identified. Is that paper from the regular records of your corporation? A. It is, sir.

Q. What, if anything, did you have to do with this matter?

A. Only seeing that the bill was properly paid.

(Testimony of H. H. Pierson.)

Q. I now show you this check of the De La Rama Steamship Company, General Agent, Special Account, of $1,263.56, payable to Nye & Nissen, dated May 23, 1944, which bears the perforation showing it was paid. Do you identify this as part of the regular records of your company?

A. It is, sir.

Q. Did that check pay this invoice, Exhibit 53 for Identification? A. It did.

Q. From what funds was that check paid?

A. A revolving fund supplied by the WSA of the United States Government.

Q. What was the amount of this revolving fund that you had from [2141] the Government?

A. We had $250,000 first and then it was increased to $350,000, and I do not know what the amount was at the time that check was paid.

Q. When this check was paid was there a balance in that fund? In other words, was this fund ever exhausted?

A. No, the fund was replenished twice a month or more if it was necessary.

Q. So it is kept up to this point of $250,000 or $300,000? A. That is correct.

Mr. Pratt: If the Court please, I offer in evidence Exhibit 53 for Identification, the invoice, and I also offer this check.

Mr. Faulkner: What count are you offering those on?

Mr. Pratt: This is offered in connection with the

(Testimony of H. H. Pierson.)

seventh count of the indictment and also as an overt act in Count 1.

Mr. Faulkner: The same general objection, your Honor.

The Court: The objection may be overruled. It may be admitted and marked.

Mr. Faulkner: Is the purchase order—

Mr. Pratt: I am not offering that.

Mr. Faulkner: I have no objection to the authentication of it, your Honor.

Mr. Pratt: Very well, then, I offer Exhibit 54 for Identification, the purchase order.

Mr. Faulkner: You will produce the man later?

Mr. Pratt: Yes. [2142]

(U. S. Exhibits 53 and 54 for Identification were thereupon received in evidence.)

(The check in question was thereupon received in evidence and marked U. S. Exhibit 158.)

Mr. Faulkner: The general objection only, your Honor.

Mr. Pratt: Q. Mr. Pierson, there is a slight discrepancy between the amount of the invoice and the amount of the check, is there not?

A. Well, I couldn't say unless I saw it, for the simple reason there was a credit sent in—

Mr. Faulkner: I thought you had read it right. The calculation shows $1,263.56, and that is the amount of the check.

The Witness: I do not know whether the credit came in before or after the check was made out.

(Testimony of H. H. Pierson.)

Mr. Faulkner: They are both the same. The check is the amount of the invoice, but the company had made some deductions.

Mr. Pratt: That is right.

Q. I direct your attention to this discrepancy, Mr. Pierson. I notice the invoice has an original typed amount of $1,263.56. I notice that your check in payment is that amount. I am referring to Exhibit——

A. This says "Less Credit Memorandum."

Q. What is the credit memorandum, $9.12? I call your attention to another paper, a credit memorandum for $9.12.

A. Well, after the check was paid, the credit memorandum [2143] arrived so we entered the deduction and put it through the account accordingly.

Q. Nye & Nissen were given credit for this $9.12?

A. No, we were given credit. They sent us the credit.

Q. Yes, yes. You then had a credit with them of $9.12 and that was owing to a mistake in the figuring of the ceiling price, was it not?

A. That is right.

Q. And all of these prices of commodities were controlled by the OPA ceiling, were they not?

A. Right.

Mr. Faulkner: Controlled by what?

Mr. Pratt: OPA ceiling. This is offered in evidence, this credit memorandum.

The Court: It may be admitted and marked.

(Testimony of H. H. Pierson.)

(The document was thereupon received in evidence and marked U. S. Exhibit 159.)

Mr. Pratt: You may cross-examine.

Cross-Examination

Mr. Faulkner: Q. Mr. Pierson, have you any knowledge of this transaction at all personally other than the fact that records were in your file?

A. That is right.

Q. In connection with this transaction, do you know whether your company ever received any direction in writing or otherwise from any Government agency not to pay the invoice which is dated May 1, 1944—that is a little indistinct——

A. Do you mean to say if we had any orders from any Government [2144] agency not to pay this bill?

Q. Not to pay that?

A. Correct, we did not.

Q. Some three weeks after the issuance of the receipt of the invoice it was paid in the regular course of business? A. Correct.

Q. And then later, a few days later, the 9th of June, you received a credit memorandum from Nye & Nissen in respect to eggs? A. That is right.

Q. And that is what your record discloses. This marking, "Charge SS. Henry White" is part of your record, is it not? A. That is right.

Q. And the "Paid" mark, De La Rama Steamship, that is yours. Now, in the lefthand corner of this exhibit there is a certificate signed "I certify

(Testimony of H. H. Pierson.)

that the services above specified have been performed or that the articles in question and quality thereof above specified have been delivered to the vessel in good condition," and two people signed that certificate, did they not?

A. That is correct.

Q. And those are employees of your company?

A. That is right.

Mr. Faulkner: That is all, your Honor.

Mr. Pratt: That is all.

ELMER J. HULT,

called on behalf of the Government; sworn. [2145]

The Clerk: Q. Will you state your name, please?

A. Elmer J. Hult.

Direct Examination

Mr. Pratt: Q. What is your occupation?

A. Right now I am chief clerk for the De La Rama Steamship Company.

Q. In April of 1944 were you then the purchasing officer of the De La Rama Steamship Company?

A. That is correct.

Q. I direct your attention to this paper, Exhibit No. 54, this purchase order, and ask you if you had to do with the issuing of this purchase order?

A. Yes, I did.

Q. And this purchase order, I notice, is dated

(Testimony of Elmer J. Hult.)

April 11, 1944, for certain products to be delivered to the steamship Henry White, Voyage 1, with the notation, "Delivery time about April 25, Pier; will advise." Now, does that indicate that the boat was not ready to have the stores put aboard at the time the purchase order was issued?

A. That is correct.

Q. And at a later time, when the boat was ready for the stores, you notified Nye & Nissen, did you?

A. That is right.

Q. Did you do that personally?

A. Yes, I did.

Q. Whom did you notify, do you know?

A. It is pretty hard to say. I couldn't say particularly who I notified at this time.

Q. Are you acquainted with any of the officers or employees of Nye & Nissen?

A. Yes, I am.

Q. Which ones? A. Mr. Berman.

Q. Berman? A. Yes, sir.

Q. You saw him here in the courtroom?

A. Yes, I do.

Q. Did you have your conversation with Mr. Berman about the time when these supplies were to be delivered on that boat?

A. It may have been. In other words, if he wasn't there we may have given the information to someone else. In other words, at the time we refer to our purchase order on the boat and tell the people to deliver on a particular day to a particular pier. Now, the information may have been given

(Testimony of Elmer J. Hult.)

to him or one of his assistants or someone in the office.

Q. You have no present recollection of who it was, is that the fact?

A. No, sir, I have not.

Q. Now, I observe that there are certain pencil changes on this purchase order. Will you explain those pencil notations or changes if you can?

A. Yes, sir. In other words, we received in place of the American Cheese there in 5's 240 pounds of American processed cheese.

The Court: Speak out loudly.

The Witness: I say in place of what was ordered, 150 pounds of American in 5's and 100 pounds of Swiss in American 5's, we received 240 pounds of American Cheese.

Mr. Pratt: Q. Are there other changes made?

A. No, there is no other changes.

Q. Do you know how it happened that the changes were made in this purchase order?

A. Why they were changed? [2147]

Q. Yes. How did that happen?

A. The other cheese was not available at the time.

Q. And the invoice, I take it, covered what was indicated by the changes? A. That is right.

Mr. Pratt: That is all.

The Court: Before you take the witness, will you be able to conclude with him before we adjourn?

Mr. Faulkner: I will if your Honor will permit

(Testimony of Elmer J. Hult.)

the clock to go as far after four as it is now before four.

The Court: With that showing we will proceed.

Cross Examination

Mr. Faulkner: Q. I have a counterpart there, if you will keep that, Mr. Hult. There is some handwriting. Now, the cheese that was changed—there were 100 pounds of American Swiss Cheese and 150 pounds of American 5's; and they supplied in lieu of that, as I understand, entirely American cheese, is that right? A. That is right.

Q. Now, the Swiss cheese is a more expensive cheese than the American, is it not?

A. That is right.

Q. And the less expensive quality in an approximate amount to the original order was supplied of American Cheese? A. That is right.

Q. That transaction represented by that purchase order is one of many that you had with the firm of Nye & Nissen, is it not? A. That is right.

Q. Did you receive any advices of any kind from any Government agency or Government officer not to pay the invoice for those goods?

A. I did not.

Q. In your dealings with the firm of Nye & Nissen in connection with quality of goods received from them, were they satisfactory?

A. You mean did we get anything from the ship that they were unsatisfactory?

Q. Yes? A. No, I did not.

Mr. Faulkner: That is all.

Mr. Pratt: That is all, Mr. Hult.

The Court: You may step down. The jurors will keep in mind the admonition of the Court and return on Tuesday, the 5th of March, at ten o'clock.

(Thereupon an adjournment was taken until Tuesday, March 5, 1946, at 10:00 o'clock a.m.)

Tuesday, March 5, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

The Court: Call the roll of the jurors.

(Roll called, all jurors being present.)

The Court: You may proceed.

Mr. Pratt: Call Mr. Van Winkle.

NELDEN JAMES VAN WINKLE,

called as a witness for the Government; sworn.

The Clerk: Q. Will you state your name to the court?

A. Nelden James Van Winkle.

Direct Examination

Mr. Pratt: Q. Mr. Van Winkle, your home is in San Francisco, it it? A. In Alameda.

Q. What is your present occupation?

A. Real estate salesman.

Q. In April and May of 1944 what was your occupation?